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Date: February 6, 2018

Ms. Marlene H. Dortch
Commission's Secretary
Office of the Secretary
Federal Communications Commission
445 12th St. SW, Room TW-A325
Washington, DC 20554

**Re: DRAFT Notice of Proposed Rule Making and Notice of Inquiry on
Accelerating Broadband Deployment by Removing Barriers to
Infrastructure Investment, WT Docket No. 17-79**

**Streamlining Deployment of Small Cell Infrastructure by Improving
Wireless Facilities Siting Policies, WT Docket No. 16-421**

**Public Notice of Draft Program Comment Addressing Collocation on
Twilight Towers, WT Docket No. 17-79**

**Revising the Historic Preservation Process for Wireless Facility
Developments**

The Cheyenne River Sioux Tribe (CRST), Tribal Historic Preservation Officer (THPO), offers these comments to the proposed actions.

The Federal Communications Commission (FCC), needs to realize why they are discussing this topic with Tribal Nations. The United States of America, who FCC represents in the Section 106 process, entered into treaties with other Nations. One of such Nations was the Great Sioux Nation. Since the first treaty until the establishment of different Sioux reservations, the US only dealt with one large group. Since there has been a separation of Tribes and boundaries, the US must now consult separately with Tribes as independent sovereign Nations.

The Cheyenne River Sioux Tribe is a Nation within their ancestral territory which entered into treaty with the US and continues to address concerns of effects to their homelands. The National Historic Preservation Act, as amended through December 16, 2016 and Codified in Title 54 of the United States Code, Chapter 3001 – Policy states;

“It is the policy of the Federal Government, in cooperation with other nations and in partnership with States, local governments, Indian tribes, Native Hawaiian organizations, and private organizations and individuals, to” –

(6) assist States and local governments, Indian tribes and Native Hawaiian organizations, and the National Trust to expand and accelerate their historic preservation programs and activities.

FCC proposing to ***“removing barriers to infrastructure investment”*** is not consistent with the above statement. FCC is favoring the industry or applicants for the installation of structures and went as far as commenting to ***“industry advancement financially”***.

FCC has commented that Tribal Nations have caused this issue of “barriers” to industry and these comments have become discussions FCC titled Section 106 Consultation.

September 1, 2016 FCC called a Section 106 Consultation meeting in Ignacio, Colorado, to discuss non-compliant towers. After several questions and answers going back and forth on the process of the TCNS system and FCC timelines, FCC brought up Tribal fees and the background. FCC stated this was addressed at a recent industry conference and a concern of a specific company. When Tribes asked which company has concerns FCC responded that they would have to check with their legal staff before answering.

The purpose of this meeting was not non-compliant towers but Tribes as barriers.

This was not Section 106 Consultation for non-compliant towers. I request FCC to face-to-face, government-to-government consultation with the CRST Tribal Council.

The Section 106 process, as described in Subpart B of 36 CFR 800, consists of but not limited to four steps:

- (1) Initiation of the Section 106 Consultation Process (36 CFR 800.3)***
- (2) Identification of historic or cultural properties (36 CFR 800.4)***
- (3) Assessment of effects to historic or cultural property (36 CFR 800.5)***
- (4) Resolution of adverse effects (36 CFR 800.6)***

Advisory Council on Historic Preservation comment on federal undertakings;

“The head of any federal agency having direct or indirect jurisdiction over a proposed federal or federally assisted undertaking in any State and the head of any federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditures of any federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register.”

FCC stated in a Public Notice announcement;

“open an examination of the regulatory impediments to wireless network infrastructure investment and deployment, including impediments associated

with the Commission's National Historic Preservation Act Section 106 review process, and the Commission has requested comment from the public on how the Commission may remove or reduce such impediments.."

FCC further on makes the statement;

"This Consultation with Tribal and Native officials is in furtherance of the Commission's government-to-government relationship as described in the Commission's Tribal Policy Statement".

FCC has conducted meetings through telephone, emails, ground US Mail, etc. On June 8, 2017 FCC held a Section 106 meeting with the Rosebud Sioux Tribe, at the Sinte Gleska University in Mission, SD. FCC also proposed another meeting at Uncasville, Connecticut on June 14, 2017. July 20, 2017 FCC held a meeting in Eugene, Oregon "as part of the FCC's Tribal Consultation". Another meeting on July 24, 2017 at Broken Arrow, Oklahoma. Another meeting on October 4, 2017 in Washington D. C. was supposed to discuss the Twilight Towers but focused primarily on Tribal concerns with the Notice of Proposed Rulemaking and Notice of Inquiry, as I was informed by THPO's who attended. This process of conducting government consultation for compliance with Section 106 Consultation with Tribes benefits the agency and not Tribal Nations. Not one (1), of these "meetings" were with CRST Tribal Council. CRST considers these meetings to be informational only and not consultation with CRST.

I attended the meeting at Mission, SD and reminded FCC of the government to government trust responsibility between the United States of America and CRST. I also stated my disagreement of the proposed "rulemaking". I informed FCC that in order for true government-to-government consultation to occur for FCC they must come before the CRST Tribal Council in Eagle Butte, South Dakota.

I also commented at a meeting of the Positive Train Control (PTC), meeting in Rapid City, SD, under the FCC review and compliance. When the federal railroads came to questions with compensation to Tribes for Tribal involvement there were no questions. The railroads actually moved forward without following Section 106 and when notified by FCC the railroads agreed to pay the penalty of 10 million dollars. So why is FCC not doing the same with Altel, Verizon, Sprint, and other communication tower projects?

It appears that FCC wants to rewrite the federal regulations and the National Historic Preservation Act in their favor or in favor of industries. It also appears that the interpretation of consultation is not 36 CFR 800, Section 106 Consultation but FCC's Tribal Policy Statement.

I now question FCC's interest for industry financial advancements over Tribal Nations concerns with preservation and protection of cultural resources. FCC should suspend all proposed telecommunications projects until there is a clear understanding the rules and guidelines to be followed, by the federal government and Tribes.

FCC has become the **"barrier"** in compliance to the National Historic Preservation Act and Section 106 Consultation Process with Native Nations across the land.

FCC and the industry assert that the Twilight Towers are unlikely to have adverse effects on historic properties that have not been detected over the last twelve (12), years. This statement is misleading as the locations of the towers have never been provided to the Tribes or any other individuals despite repeated requests to access that information for Section 106 compliance. It is impossible for FCC to know if there has been an adverse effect or report of sites religious and cultural significance to Tribes. During the original construction of the tower leaves concern of sites or cultural resources that could have been adversely affected during ground disturbance.

FCC states that they do not anticipate taking any enforcement action or imposing any penalties based on good faith deployment during the Twilight Tower period. Comment 16 on page 4 of the public notice specifies that “to the extent the owner of any Twilight Tower is shown to have intentionally adversely affected a historic property with the intent to avoid requirements of Section 106, Section 110 (k) of the NHPA would continue to apply”. How is FCC defining “good faith” with constructing Twilight Towers?

Twilight Towers were all constructed out of compliance with Section 106 therefore there is no good faith construction. How will FCC apply Section 110 (k), to a Twilight Tower when they do not know the locations of them? CRST considers this a means for FCC to avoid taking responsibility and action on the lack of Section 106 Consultation during the Twilight Tower period.

Responsibility for Section 106 compliance would remain with the federal agency per 36 CFR 800.2 where it is not defined and assigned to another agency, licensee or applicant through an alternative agreement adopted pursuant to 36 CFR 800.14. FCC should be accepting responsibility for the lack of compliance with Section 106 and enforcement or penalties should be levied against the agency for non-compliance instead of FCC self-regulating this issue and deciding they won’t take action against industry on these 4000 plus infractions. This compliance issue needs to be addressed and properly assigned to the FCC before approval of any program comment which misrepresents and misplaces compliance with Section 106 and the agency absolves itself of any wrong doing with Twilight Towers.

Draft Program Comment states;

“... (1) the limited reliability of Section 106 review documentation from the time period;...”

“... (2) the lack of specificity in the FCC’s rules regarding Section 106 review at the time the Twilight Towers were constructed;...”

“... (3) the limited likelihood that Section 106 review could identify adverse effects from these towers that are not yet known after 12 years or more;...”

What data is FCC using to determine that Section 106 review documentation from that time period is unreliable? CRST THPO requests the data used to make this apparently unsubstantiated assertion as justification for the need for a program comment. The regulations concerning Section 106 documentation have not changed since 1992, almost a full decade prior to Twilight Tower period.

Addressing adverse effects is one of the primary functions of the Section 106 process and is an essential component of it. Refer to 36 CFR 800.4 Identification of historic property

through 36 CFR 800.7 Failure to resolve adverse effects. The assumption that Tribes or SHPO's cannot identify adverse effects relating to the construction of 12 year old towers is not the fault of either entity. The fault lies with FCC's failure to notify Tribes on the location of the Twilight Towers. Twilight Towers have not been entered into the TCNS and thus the notification process has not been initiated and is incumbent on FCC to initiate Section 106 consultation to address potential adverse effects to historic properties from Twilight Towers. FCC must initiate the notification through the TCNS for all Twilight Towers as it was their responsibility during the Twilight Tower period.

"...review of each collocation only satisfies the Section 106 requirements for that collocation; it does not clear the tower for future collocations. Given the large number of Twilight Towers and potential collocations that could be installed on those towers, the existing review process imposes burdens on all participants that, in the content of the other considerations discussed herein, are not commensurate with its historic preservation benefits."

"...requiring each licensee or applicant to review each tower individually before collocating is not effective or efficient means for the FCC to comply with its obligations under Section 106."

The Section 106 Process is a requirement for every new tower construction. The Twilight Towers were constructed out of compliance and would have required review if the FCC would have properly conducted Section 106 review during the Twilight Tower period.

The Program Comment should reflect on historic preservation under Section 106 rather than attempting to circumvent it. FCC should refocus its efforts into bringing these Twilight Towers into compliance and develop a system for tracking compliance and Section 106 clearance. Duplication of Section 106 compliance for multiple collocations is unnecessary for all parties' not just industries.

Unless FCC develops a mechanism of informing Tribes of when collocations will occur, such as the TCNS, Tribes have no idea as to the effects of the project. How will FCC be notified that there is an adverse effect?

Again, I request the Federal Communications Commission decision makers to meet with the Cheyenne River Sioux Tribal Council for government-to-government consultation. I also request the involvement of the Advisory Council on Historic Preservation for the interest of both sides, as FCC has become one-sided.

Respectfully

A handwritten signature in black ink, appearing to be a stylized 'S' followed by a flourish.